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VIA ECF

June 1, 2022

The Honorable Naomi Reice Buchwald
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 21A
New York, New York 10007

Re: **Red Mountain Medical Holdings, Inc. v. Brill, M.D., et al., Case No. 1:20-cv-02652**

Dear Judge Buchwald:

We write on behalf of Red Mountain Medical Holdings, Inc., f/k/a CDx Diagnostics, Inc. (“CDx”) with respect to our March 25, 2022 letter opposing Defendants’ request for leave to file a motion for summary judgment (ECF Dkt. No. 50) (the “Opposition.”). We realize that Exhibits 1-29 to the Opposition (the “Exhibits”) contain information that has been previously marked as “Confidential” in this case. Thus, in accordance with ECF Rule 21.8, we emailed the ECF Help Desk and asked for an emergency sealing request for each of the Exhibits. The ECF Help Desk confirmed that as of 2:16pm today, the Exhibits have been placed under seal.

We are writing to Your Honor to formally request that the Exhibits be sealed during the pendency of this matter, or until a time Your Honor determines the documents no longer need to be under seal.

Per the terms of the Section 15(a) of Stipulated Protective Order entered in this action on May 15, 2022 (ECF No. 44) (the “Protective Order”), “[n]o Confidential Material shall be filed in the record of this Action or with the Court” except, if “a Party uses Confidential Material in a pleading, motion, or other submission filed with the Court,” and “redaction of only the Confidential Material...would be both significantly impractical and likely to be unduly burdensome for the Court, the filing party may request an order from the Court directing the sealing of the Confidential Material, or placing the entire pleading...under seal[.]”

In this action, all documents produced by the Parties, as well as by third parties, have been marked “Confidential.” Additionally, all depositions have been designated “Confidential.” Each of Exhibits 1-29 consist of either: (i) documents produced in this case by the Parties, as well as by a third party (e.g., Exhibit Nos. 10, 16, 28), all of which are stamped “Confidential”; or (ii) excerpts from deposition transcripts, all of which were designated “Confidential.”

While we do not believe that the substance of these documents, or of this deposition testimony, meets the governing standard for sealing as set forth in *Lugosch v. Pyramid Co. of Onodaga*, 435 F.3d 110 (2d Cir. 2006), we are mindful of the fact that this Court issued a protective order allowing parties to file under seal all discovery materials and testimony that have been previously marked as confidential, and we want to ensure that our filing does not violate that order. *See* Protective Order, ECF No. 44.

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We feel this is particularly important for the third parties who produced documents during discovery, under the assurance that those documents would fall under the purview of the Protective Order.

Because the *entirety* of each document and each deposition transcript has been designated “Confidential,” we believe redactions would be impractical. Thus, in conformance with the Protective Order entered in this case, we respectfully request that all of the Exhibits (i.e., Exhibits 1-29) be filed under seal.

Should Your Honor request a formal motion for an order sealing the Exhibits, we will of course file one in lieu of this letter request.


Respectfully submitted,



Jeffrey M. Eilender

cc: All counsel of record (via ECF)

The request to seal is granted for the limited purpose of the premotion letter referenced herein. **SO ORDERED.**


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
June 13, 2022